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File No. O Forfeited Lands /41

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Legal **DEPARTMENT**

A. **BRANCH**

Subject:—

Opinions Under Bombay Forfeited Lands Restoration Act, 1938

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B.K.S 5/5.

R.I.No.2093/20.3.41.

Submitted.

One Parsotam Dayaram held land measuring 113 a- 30 g in the village of Dagwan, Dt. Surat. Owing to failure to pay land revenue during the C.P. movement the lands were forfeited to Govt. in the year 1930; and sold to one Govindbhai Khushwal. It appears that the a lands were mortgaged without permission by the said Parsotam to one Virchand Chenaji and Bai Vijkor by three mortgage-deeds in the year 1932. Subsequently two gentlemen were appointed arbitrators in the matter with the consent of Govindbhai, son of Parsotam, since deceased. As a result it was agreed that Govindbhai Khushwal should transfer the lands in the names of the arbitrators. The arbitrators then, by way of award, decided that lands measuring 75a-23g. should be given to the mortgagees, Mr. Virchand Chenaji and Bai Vijkor in full satisfaction of their dues under the mortgages and the remaining lands (38 a 29 g) should remain with them presumably to transfer them to the said Govindbhai. The entries in the Record of Rights were made accordingly. The award was later declared null and void by the High Court. In 1939 Govindbhai applied for restoration of the said lands (75 a - 23 g) under the Bombay Forfeited Lands Restoration Act, 1939. In the restoration proceedings the Tribunal held that the mortgagees were not entitled to any compensation in law, but that under section 13(4) of the Act it was open to Govt. to compensate the mortgagees, if the mortgages were in good faith and for consideration by imposing such terms and conditions on the original holder as would satisfy the just claims of the mortgagees. On the petition of the mortgagees, therefore, Govt. in their letter No. 7130-D-33, dated 11.9.1940 informed

them that the Collr. of Surat was instructed to call upon Mr. Govindbhai Parsottam to revive the two mortgages of the year 1922. It appears however form the report of the Collr. of Surat at p. 17 ante that Govindbhai is prepared to revive the mortgages only in respect of those survey numbers which have been acquired under the Act for the purpose of restoration and not in respect of lands which are already in his possession and which were not therefore notified under the Act. Both the Collr. and the Commr. N.D. consider that the contention of Govindbhai refusing to revive the mortgage in respect of land measuring 36 a - 27 g (in his possession is not fair and equitable. It appears however that in accordance with the orders of Govt. the lands measuring 75 a - 22 g. have been restored to the original holder Govindbhai on the condition mentioned in G.M. R.D. No. 7159/33-9964-B, dated 17.11.1938 viz. that "the grantee shall within a period of 3 months revive any tenures, rights, incumbrances and equities to which the said land was subject at the time when it was forfeited and if he fails to fulfil this condition, the Collr. shall be entitled to resume the land with the previous sanction of the Commissioner". In these circumstances the question that arises for the consideration of the R.L.A. is whether Govindbhai can be compelled to revive the mortgage in respect of the lands measuring 36 a 39 g. which are in his possession and which were not notified and acquired under the provisions of the Bombay Forfeited Lands Restoration Act, 1938.

2. It appears that it will not be legally feasible to bring about the revival of the mortgage in respect of the lands not restored under the Bombay

BKS 5/6

(3)

Restoration Act, 1939

Forfeited Lands Under sec 19(4) of the Act, on its possession being taken by the Collr. under sub-section (1), the land vests absolutely in the Provl. Govt. can restore the same to the original holder thereof on such terms and conditions as it thinks fit. It is true the words "on such terms and conditions as it thinks fit" are very wide and do not necessarily mean terms and conditions to be attached to the particular lands proposed to be restored. But as reported by the Collr. of Surat in this case the lands vesting in Govt. have been already restored to Govindbhai on the condition mentioned in para 3 of the forwarding letter No. 7150-B/39-24567dated 11-9-40 below Govt. letter R.D.No. 7150-B/39-24567 d. 11-9-40 to Mr. Virchand Shah. The condition is "to revive the two mortgages in respect of the forfeited lands restored to Mr. Govindbhai within a period of one month." Consequently the contention raised by Govindbhai before the Collr. of Surat that he is not bound to revive the mortgage in respect of the lands which were and are in his possession irrespective of restoration appears to be correct. It does not therefore appear legally possible to grant the request made by the mortgagee in their petition at p. 1 ante.

sd/——— 19/4/41.

I am doubtful about the view taken by Mr. Deshmukh.

2. Section 19(4) of the Bombay Forfeited Lands Restoration Act, 1939, provides that the land on its possession being taken by the Collector under sub-section (1) vest absolutely in the Provincial Gover-

mean free from all encumbrances and the Provincial Government may restore it to the original holder thereof on such terms and conditions as it thinks it. The words underlined are very wide and do not necessarily mean terms and conditions attached to the lands restored. The terms and conditions subject to which the restoration of lands was ordered under section 18(4) by Government by G.O.No. 7169-B/77-31817 dated the 11th September.

B.H.S. 6/5.

Office of the A.G.G.

It appears that it will not be legally feasible to bring about the revival of the mortgage in respect of the lands not restored under the Bombay Forfeited Lands Restoration Act, 1939. Under section 12(3) of the Act, on the possession being taken by the Collector under sub-section (1), the land vests absolutely in the Provincial Government free from all encumbrances and the Provincial Government can restore the same to the original holder thereof on such terms and conditions as it thinks fit. It is true the words "on such terms and conditions as it thinks fit" are very wide and do not necessarily mean terms and conditionsx to be attended to the particular lands proposed to be restored. But as reported by the Collector of Surat in this case the lands vesting in Government have been already restored to Govindbhai on the condition mentioned in paragraph 2 of the forwarding letter No.7150-D/39-24537 dated 11-8-1940 below Government letter, Revenue Department No. 7150-D/39-24537 dated 11-8-1940 to Mr. Virchand Shah. The condition is "to revive the two mortgages in respect of the forfeited lands restored to Mr. Govindbhai within a period of one month." Consequently the contention raised by Govindbhai before the Collector of Surat that he is not bound to revive the mortgage in respect of the lands which x were and are in his possession irrespective of restoration appears to be correct. It does not therefore appear legally possible to grant the request made by the mortgagors in their petition at p.1 ante.

Sd/-------30/5
Remembrancer of Legal Affairs.

G.R. to D.O.No. 4885, dated the 22nd May 1941.

D.E.S. 0/5.

Submitted.

2. Attention is invited to R.L.A's Opinion No. 4665 dated 22-5-1941 in which the R.L.A. advised that it was not legally possible to ask Mr. Govindbhai to revive the mortgage in respect of the lands which were in his possession irrespective of restoration. The R.D. has now raised for the consideration of the R.L.A. the question whether the orders issued in G.M.No.7159-B/33/24567 dated 11-9-1940 which decided the question of the revival of the mortgages can berevised in view of the equity of the case.

3. It is true that both the Collr. of Surat and the Commr., N.D. agree that Govindbhai's refusal to revive the mortgave in respect of the lands which were not notified under the Bombay Forfeited Lands Restoration Act, 1938, is not fair and equitable. But it does not appear that Govt. can now revise the orders issued in G.M., R.D., No.7159-13/33 dated 11-9-1940. Although under subsection (4) of section 13 Govt. can restore the lands to the original holder on such terms and conditions as it thinks fit, there is no provision in the Act empowering Govt. to revise its order passed under this section. As observed in the previous opinion, the lands have been already restored to the original holder on condition that he 'revived the two mortgages in respect of the forfeited lands restored to him'. The orders issued in the G.M.,R.D., dated 11-9-1940 have been already acted upon. It does not therefore

appear that anything further can be done in the matter.

Id/————————18/6/41.

A.S.,

I agree no further condition can be attended to the restoration of lands at this stage, as possession has already been delivered. The conditions of restoration specified in the G.O.R.D. dated 11-9-1940 intimated and acted upon. Those conditions cannot be revised now, however equitable the revision may be, without the consent of the person representing the restored estate. (See D.L.A's opinion No. 4693 dated 22-6-1941).

As in AS'a note be seen.

Id/————
10/6

D.L.A. Id/———— 21/6

U.R. to R.D.No. 5320 dated 26-6-1941.

D.K.S. 6/5.

(In)

25/6